



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

2 August 2021

Mr Elliott Wilson
Tax Counsel Network
Australian Taxation Office
PO Box 9990
CANBERRA ACT 2600

via email: *Elliott.Wilson2@ato.gov.au*

Dear Mr Wilson

Draft Taxation Ruling TR 2021/D3

We acknowledge the work of the Australian Taxation Office (ATO) in supporting small business and family enterprise with their Research and Development Tax Incentive (R&DTI) claims through publishing guidance material such as taxation rulings and determinations. However, more needs to be done to provide a clear understanding for small business taxpayers and to increase clarity and certainty for their advisers on the Commissioner's interpretation of the R&DTI provisions. As such we offer the following comments:

1. The draft ruling, in its current form, does not provide sufficient clarity or certainty on the R&D "at risk" rule and further complicates the application of the rule for small businesses and their advisers. We have engaged with R&D advisors that have highlighted that the draft rule does not reflect generally accepted practice and the examples provided are either confusing or too unrealistic to be of practical use. There is a need for guidance on areas that will assist small businesses and their advisers with claiming the tax incentive (i.e. guides to apportionment costs, clarifications of the roles and limitations between AusIndustry and the ATO, etc.).
2. We urge the Commissioner to ensure that ATO staff, particularly those auditing and reviewing R&DTI claims, are cognisant of the limitations of the worked examples included in the ruling. That is, that each company will have unique circumstances and will not necessarily "fit" into a published case study example. Each R&DTI claim *must* be reviewed on its particular facts by an experienced R&DTI assessor, with the overarching aim of promoting the intention of the R&DTI program and a nuanced appreciation of the small business taxpayer.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Paul Buckingham on 02 6243 7821 or by email to Paul.Buckingham@asbfeo.gov.au

Yours sincerely

The Hon. Bruce Billson
Australian Small Business and Family Enterprise Ombudsman

T 1300 650 460 E info@asbfeo.gov.au
www.asbfeo.gov.au

Office of the Australian Small Business and Family Enterprise Ombudsman
GPO Box 1791, Canberra City ACT 2601